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PROVISIONS FOR STATE-WIDE INITIATIVE AND REFERENDUM

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Among the subjects of popular discussion, the initiative and referendum just now holds a prominent place. Considered an essential part of the progressive program of which we hear so much, it is lauded by its enthusiastic advocates as a panacea for the ills of representative government and denounced by its antagonists as the subtle and sinister instrument of revolution, designed to work the ultimate overthrow and ruin of republican institutions. By many it is regarded as a recent innovation, a veritable *res nova*, with all the interest that attaches to a marvelous political elixir, just discovered, in regard to whose virtues the savants and the proletariat are still somewhat at variance among themselves. A little investigation, however, reveals the fact that it is only in comparison with the recent past that this system can claim the charm of novelty. "It hath been already of old time which was before us," and if there be new things under the sun, the initiative and referendum is not one of them.

Direct legislation is the natural and convenient expression of the will of a comparatively small, self-governing, independent state. The pure democracies of ancient Greece and their less conspicuous successors down to the early settlement of America bear testimony to this fact. It was so among the primitive German tribes in the time of Tacitus. Examples were not wanting in the middle ages. High among the Alps, where the eagle soars, where the snow falls and freedom dwells, even unto this day a sturdy race realizes in large measure the sovereignty of man and the dream of liberty. It was left to Switzerland to preserve and hand down to our own time the initiative and referendum. The development of the system in this Alpine federation is fully presented on succeeding pages, and even a brief summary here would seem superfluous.

Direct legislation has been an important feature of the govern-

mental system of Switzerland from the beginning of its history. In the *landsgemeinde* generations ago the Swiss yeomanry assembled at least once a year to elect officers and enact laws. This primitive legislative assembly met in an amphitheater of "venerable woods" and "everlasting hills," under the wide and open sky through which the spirit of light and freedom descended like a benediction from on high. In this atmosphere of freedom and equality the cantonal democracies of Switzerland evolved through the centuries. Changes have come; written constitutions have taken the place of custom and precedent, and in the larger divisions of the federation the representative system of government prevails, but in the smaller cantons the picturesque popular assembly of all the free citizens still meets to legislate for the common weal.

A distinction, of course, may be drawn between direct legislation through such an assembly and direct legislation through the ballot box. On this subject M. Welte, himself a member of the Swiss federal assembly, in a speech against the referendum twenty years ago, declared:

"The *landsgemeinde* has nothing in common with the referendum. It is a real and living thing, while the other is nothing but a dead form of democracy on paper. In the *landsgemeinde* each man feels that he is also a citizen. In the referendum the ballot-paper is his substitute."

In the last thirty-five years, however, the initiative and referendum has been in operation, through the "ballot-paper," under the confederation of Switzerland and for varying periods in a number of cantons. The results have called forth a variety of testimony in Switzerland and beyond its borders, opinions not infrequently taking the direction of the preconceived bias of the critic. After all has been said, the fact remains that there is no pronounced disposition among the Swiss people to surrender the power reserved to them in the initiative and referendum. They prefer to keep it, to exercise and perfect it in the light of experience.

The results of Switzerland's experiments have reached far beyond her borders. Her legends of liberty are household treasures of the world. Her free institutions have been the inspiring theme of those struggling for freedom and independence. Her contribution to direct legislation has attracted in recent years the attention of citizens of our own country who have been convinced that our representative

system of government is not without its defects, that it has proven inadequate to the test of this commercial age, that it needs the sustaining and ever-present power of the people whose interests alone it was created to subserve.

The referendum in various forms has long been familiar to Americans. Its use in adopting constitutions and constitutional amendments dates back to the Revolution. In place of the *landsgemeinde* New England presents the town meeting in which the whole citizenship meet in legislative capacity to enact laws of local application. Mr. Bryce has given an interesting comparison of the two in his "The American Commonwealth."

The revolutionary period furnishes a solitary instance of provision in the state constitution for the initiative. On October 1, 1776, a convention assembled in Savannah, Georgia. It formulated a very progressive constitution for the time, which contained among other things the following section:

"No alteration shall be made in this constitution without petitions from a majority of the counties, and the petitions from each county to be signed by a majority of the voters in each county within the state; at which time the assembly shall order a convention to be called for that purpose, specifying . . . the alterations to be made, according to the petitions preferred to the assembly by the majority of the counties as aforesaid."

It is in comparatively recent years, however, that practical application has been made of the principle of the state-wide initiative and referendum. The Farmers' Alliance some years ago had endorsed these agencies. About the same time it found its way into the platform of the populist party. In 1894 the Direct Legislation League was formed, and a more systematic propaganda was organized for the introduction of the Swiss form of the initiative and referendum into all of the states, and it was even proposed to extend it to the federal government. At first the movement appears to have been without financial support, except such as was gathered in meager voluntary subscriptions from the slim purses of a few converts and enthusiastic advocates. The organ of the league, the *Direct Legislation Record*, edited by Eltweed Pomeroy, had a limited circulation and in a few years it suspended publication. The *Arena*, which promptly took up the battle and waged it right valiantly under the editorial leadership of B. O. Flower, was not financially much more

fortunate. The various publications devoted to the advancement of the cause of direct legislation in America, however, had, from 1890 to 1897, a wonderful influence, and leagues organized in the interest of this reform sprang up in many states. It was powerfully aided by organized labor, Powderly, Gompers and Sullivan early giving it substantial support.

The work in behalf of the state-wide initiative and referendum was to win its first signal success in the State of South Dakota. When the Knights of Labor were in their ascendancy in 1885, Rev. Robert Haire, a Catholic priest, now of Aberdeen, that state, proposed what he termed the "people's legislature," which included the principles of the initiative and referendum. He advocated this for a time until the Swiss system was brought to his attention. His enthusiasm was not abated but he perhaps slightly modified his views. Henry L. Loucks, now of Watertown, South Dakota, became president of the Farmers' Alliance. In this position he took up Father Haire's ideas and succeeded in having them incorporated in the platform of the National Farmers' Alliance. Loucks and his followers earnestly advocated the adoption of the initiative and referendum. In 1897 their views gained ascendancy in the state legislature and that body submitted to the people an initiative and referendum amendment to the constitution. This was ratified by the electors of the state at the November election in 1898, by a decisive majority.

The movement thus effectually inaugurated has since been steadily gaining ground. The following significant summary presents the

Progress of the Initiative and Referendum in America

- 1897. South Dakota legislature voted to submit an initiative and referendum amendment to constitution.
- 1898. The electors of South Dakota adopted initiative and referendum amendment by vote of 23,876 to 16,483.
- 1899. Oregon legislature voted to submit initiative and referendum amendment to constitution.
Utah legislature voted to submit initiative and referendum amendment to constitution.
- 1900. The electors of Utah adopted initiative and referendum amendment by vote of 19,219 to 7,786.

1901. Oregon legislature a second time, as required by constitution, voted to submit initiative and referendum amendment to constitution.
Nevada legislature voted to submit referendum amendment to constitution.
1902. The electors of Oregon adopted initiative and referendum amendment by vote of 62,024 to 5,668.
1903. Nevada legislature a second time, as required by constitution, voted to submit referendum amendment to constitution.
Missouri legislature voted to submit initiative and referendum amendment to constitution.
1904. The electors of Nevada adopted referendum amendment to constitution by vote of 4,393 to 702.
The electors of Missouri defeated initiative and referendum amendment.
1905. Montana legislature voted to submit initiative and referendum amendment to constitution.
1906. The electors of Oregon adopted supplemental initiative and referendum amendment to constitution by vote of 46,678 to 16,735.
The electors of Montana adopted initiative and referendum amendment by vote of 36,374 to 6,616.
1907. The electors of Oklahoma adopted a state constitution, including provisions for the initiative and referendum, by vote of 180,333 to 73,059.
North Dakota legislature voted to submit initiative and referendum amendment to constitution. The following legislature failed to submit amendment as required by constitution.
Maine legislature voted to submit initiative and referendum amendment to constitution.
Missouri legislature voted to submit initiative and referendum amendment to constitution.
1908. The electors of Missouri adopted initiative and referendum amendment by vote of 177,615 to 147,290.
The electors of Michigan adopted a constitution containing provision for referendum on laws and initiative on constitutional amendments by vote of 244,705 to 130,783.
1909. Arkansas legislature voted to submit initiative and referendum amendment to constitution.

- Nevada legislature voted to submit initiative amendment to constitution.
1910. The electors of Arkansas adopted initiative and referendum amendment by vote of 91,367 to 39,111.
- Colorado legislature voted to submit initiative and referendum amendment to constitution.
- The electors of Colorado adopted initiative and referendum amendment by vote of 89,141 to 28,698.
1911. California legislature voted to submit initiative and referendum amendment to constitution.
- The electors of California adopted initiative and referendum amendment by vote of 168,744 to 52,093.
- Nevada legislature a second time, as required by constitution, voted to submit initiative amendment to constitution.
- Washington legislature voted to submit initiative and referendum amendment to constitution.
- Nebraska legislature voted to submit initiative and referendum amendment to constitution.
- Idaho legislature voted to submit initiative and referendum amendment to constitution.
- Wyoming legislature voted to submit initiative and referendum amendment to constitution.
- Wisconsin legislature voted to submit initiative and referendum amendment to constitution.
- North Dakota legislature voted to submit initiative and referendum amendment to constitution.
- The electors of Arizona adopted a constitution containing provision for the initiative and referendum by vote of 12,187 to 3,822.
- The electors of New Mexico adopted a constitution containing provision for the referendum by vote of 31,742 to 13,399.
1912. The electors of Washington will vote on adoption of initiative and referendum amendment at the November election.
- The electors of Nebraska will vote on the adoption of initiative and referendum amendment at the November election.
- The electors of Idaho will vote on the adoption of initiative and referendum amendment at the November election.
- The electors of Wyoming will vote on the adoption of initiative and referendum amendment at the November election.

The electors of Wisconsin will vote on the adoption of initiative and referendum amendment at the November election. The electors of Nevada will vote on the adoption of initiative amendment at the November election.

The electors of Indiana will vote on the adoption of a constitution, containing provision for the initiative and referendum, at the November election.

The constitutional convention of Ohio has submitted a series of amendments to its constitution, including one providing for the initiative and referendum. These will be voted on at a special election, September third.

1913. North Dakota legislature will consider, the second time, amendment to the constitution providing for initiative and referendum.

Not only has the movement for direct legislation captured a number of states and prepared the way for sweeping victories in others at the coming fall election, but it has also made converts of a number of distinguished public men, notably William Jennings Bryan, Woodrow Wilson and Theodore Roosevelt, to say nothing of a goodly array of governors, United States senators and members of the national house of representatives. In these later days, even the so-called conservative or reactionary statesmen with political ambitions seek to avoid expressing an adverse opinion on this popular tenet of the progressive faith.

South Dakota

South Dakota, as we have seen, was the first state to adopt an initiative and referendum amendment to its constitution. The provisions of this amendment are briefly expressed and comprehensive. The people reserve to themselves the "right to propose measures, which measures the legislature shall enact and submit to a vote of the electors of the state, and also the right to require that any laws which the legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect." These reserved powers or "rights," as they are called, are, of course, respectively the initiative and the referendum. It is further provided that "not more than five per centum of the qualified voters of the state shall be required to invoke either the initiative or the referendum;" that the governor shall not veto measures enacted by vote of the people;

and that the legislature shall enact laws carrying into effect the provisions of this section of the constitution.

In 1899 the legislature of South Dakota passed a law supplementing and carrying into effect in somewhat extended detail the initiative and referendum amendment to the constitution ratified by the people the previous year. This law provides that when initiative petitions, properly signed, are filed with the secretary of state, that officer shall transmit them forthwith to the legislature when in session or promptly on the convening of the first subsequent session. The legislature is required to "enact and submit all . . . proposed measures to a vote of the electors of the state at the next general election." No provision appears to be made for the amendment of proposed measures or the submission of similar competing measures by the legislature. The referendum is authorized on all laws except those "necessary for the immediate preservation of the public peace, health and safety, support of the state government and its existing institutions," on the filing of petitions, signed by not less than five per centum of the electors, with the secretary of state, not later than ninety days after the close of the session of the legislature in which such laws were enacted. An act sustained by a majority of all the votes cast thereon becomes a law; an act which fails to receive such majority is made of non-effect or vetoed. The law requires that the ballot used at elections must contain the full text of the initiative and referendum measures submitted to the people. At some recent elections these ballots have been of extravagant length and have frequently been exhibited by opponents of direct legislation as an awful example of a foolish and revolutionary innovation. The law also provides for the initiative and referendum in "cities and towns," on petitions signed by five per centum of the electors residing in such municipalities.

The essential provisions of the South Dakota plan, it will be seen, include a brief constitutional provision, general and mandatory in form, providing for the initiative and referendum; and an act by the legislature, authorizing in detail the application of the system. It was evidently the purpose of those who framed the constitutional provision, in conformity with approved custom, to limit the constitution to an organic provision and to leave to the legislature all statutory enactments elaborating such provision. The results were apparently satisfactory to the friends of the reform.

Until the year 1908 the people of South Dakota made no use of the state-wide power, secured to them through legal enactment nine years before. In that year the referendum was invoked against laws passed at the previous session of the legislature and with them was submitted to the people a law brought before the legislature by initiative petition. At the next general election in 1910 six laws were submitted to the electors of the state. At this same election the legislature submitted to the people six constitutional amendments. These latter were not invoked by petition, but the votes on them are given in the following table for purposes of comparison:

INITIATIVE AND REFERENDUM VOTES IN SOUTH DAKOTA

	Yes.	No.	Majority Approving	Majority Rejecting	Percentage of Total Vote
1908					
Local option liquor law	39,075	41,405	.....	2,330	70
Divorce law	60,211	38,794	21,417	.....	87
Quail law	65,340	32,274	33,066	.....	86
Sunday law	48,378	48,006	372	.....	85
(Total vote for governor, 113,904.)					
1910					
LAWS					
County option	42,416	55,372	.....	12,956	92
Electric headlights on locomotives	37,914	48,938	.....	11,028	82
"Czar" law, suspension from office by governor	32,160	52,152	.....	19,992	80
Embalmers' law	34,560	49,546	.....	14,986	80
Congressional districts	26,918	47,893	.....	20,975	70
Militia	17,852	57,440	.....	39,588	71
CONSTITUTIONAL AMENDMENTS					
Renting lands	48,152	44,220	3,932	.....	87
Salary, attorney-general	35,932	52,397	.....	16,465	83
Equal suffrage	35,289	57,709	.....	22,420	88
Debt limitations	32,612	52,233	.....	19,621	80
Revenue amendment	29,830	52,043	.....	22,213	77
New institutions	36,128	47,625	.....	11,497	79
(Total vote for governor, 105,801.)					

While the initiative and referendum has not been long in operation in South Dakota, the people of that state are forming opinions in regard to its practical workings. In a recent letter Governor R. S. Vessey says:

"I might say that the operation of these laws in South Dakota has been generally successful and satisfactory, but in my judgment the practical efficiency thereof would be materially increased and the interests of the majority better safeguarded if the percentage of voters necessary to either initiate or refer a measure were increased considerably."

Utah

Following the example of South Dakota the people of Utah in November, 1900, adopted an amendment to the constitution of that state. This amendment was drawn on the same general plan as that of South Dakota. The following excerpt includes its essential provisions:

"The legal voters, or such proportional part thereof, of the State of Utah, as may be provided by law, under such conditions and in such manner as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the legislature (except those passed by a two-thirds vote of the members elected to each house of the legislature) to be submitted to the voters of the state before such law shall take effect."

This provision might have been more happily worded, but its purpose is clear and sufficiently definite. In one particular it differs from the corresponding provision of the constitution of South Dakota. In the latter the legislature is required to enact supplemental legislation; in the former the legislature is simply permitted, not directed, to do this. The Utah amendment also authorizes the legislature to extend the initiative and referendum to legal subdivisions of the state. Up to the present time the legislature of Utah has not chosen to enact laws carrying into effect these sections of the constitution providing for direct legislation.

The experience of this state has doubtless had something to do with the form of similar sections that have since been incorporated in the constitutions of other states. The friends of the movement for direct legislation in later years have been insistent that constitutional provisions embracing their reform shall be set forth in such details and at such length that they will be self-executing, and, as far as possible, self-sufficient to secure to the people the exercise of the reserved power, even without supplemental enactments by the

legislature. "To make sure of it, we will put it into the constitution, so that we shall not be dependent upon the legislature for the opportunity to exercise the reserved power," they say; and as a result we find recent constitutional provisions for the initiative and referendum somewhat extended and arrayed in some instances in all the prolixity of statutory verbiage. To guard the interests of the people against the real or imaginary designs of the legislature, there has been recently a growing disposition to ignore the distinction between organic and statutory law and an increasing tendency to "legislate in the constitution."

Oregon

The name of Hon. W. S. U'Ren has been prominently identified with the movement in Oregon from its inception down to the present time. In 1892 he organized the Oregon Direct Legislation League, of which he was chosen secretary, a position that he held for ten years—until the initiative and referendum amendment became a part of the constitution of that state. In 1895 he appeared before the legislature of Oregon as the agent of various organizations interested in the movement. In this work he was active and indefatigable. Through the various societies that he represented, he distributed 70,000 pamphlets in English and German, presented to the legislature petitions signed by 13,000 people and secured endorsements of political parties at state and local conventions. The measure for which he labored earnestly in that year failed on a tie vote in the state senate and by only a single vote in the house. Shortly afterward he wrote to a fellow-worker:

"We are sure of success soon. No great reform ever made such great strides before. Two years and two months ago not one man in a thousand in Oregon knew what the initiative and referendum meant. To-day I believe that three-fourths of the intelligent voters understand and favor this revolution."

Later elected to the legislature, he found opportunity to press more vigorously and effectively his propaganda. Finally, in 1899, the initiative and referendum amendment passed the Oregon legislature, and, in compliance with constitutional requirement, passed that body again in 1901 and was submitted to the people the year following. U'Ren and his friends had done effective work. The amendment was adopted by the decisive majority of 62,024 to 5,668.

A number of causes made Oregon a fruitful field for this work. The action of the legislature of that state for a number of years had been most unsatisfactory. Domination by powerful industrial and financial interests was frequently charged. The lobbyist plied his work openly and unrebuked. The struggle over the election of United States senators, frequently bitter and prolonged, at times discredited the state and deprived it of its proper representation in the senate of the United States. The popular prejudice against state legislatures was especially strong in Oregon. The people were ready for a change that held forth a prospect of a new and improved political order of things.

As the initiative and referendum powers have been more extensively used in Oregon than in any other state, the essential portion of the amendment conferring them is here reproduced in full:

ARTICLE IV

SECTION 1. The legislative authority of the state shall be vested in a legislative assembly, consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and amendments to the constitution and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power at their own option to approve or reject at the polls any act of the legislative assembly. The first power reserved by the people is the initiative, and not more than eight per cent of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon. The second power is the referendum, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety) either by the petition signed by five per cent of the legal voters, or by the legislative assembly, as other bills are enacted. Referendum petitions shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the bill on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people shall be had at the biennial regular general election, except when the legislative assembly shall order a special election. Any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. The style of all bills shall be: "Be it enacted by the people of the State of Oregon." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes cast for justice of the supreme court at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which

the number of legal voters necessary to sign such petition shall be counted. Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he, and all other officers, shall be guided by the general laws and the act submitting this amendment, until legislation shall be especially provided therefor.

SEC. 1a. The referendum may be demanded by the people against one or more items, sections or parts of any act of the legislative assembly, in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections or parts of an act shall not delay the remainder of that act from becoming operative. The initiative and referendum powers reserved to the people by this constitution are hereby further reserved to all local, special and municipal legislation of every character, in and for their respective municipalities and districts. The manner of exercising said powers shall be prescribed by general laws, except that cities and towns may provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. Not more than ten per cent of the legal voters may be required to order the referendum nor more than fifteen per cent to propose any measure, by the initiative, in any city or town.

Laws have been passed providing in detail for carrying out the foregoing sections of the constitution. Provision has also been made for supplying people with information relative to the measures upon which they are called to vote. Interested persons may prepare arguments or explanations for or against proposed measures submitted at the same election, which with the full text of these measures are printed and bound together by the secretary of state and by him distributed to each elector. The expense of preparing and printing the argument or explanation must be borne by the person or persons furnishing the same.

The results of direct legislation in Oregon are presented on pages 94-97.

The limitations of this article will not permit comment on the various measures enumerated in the following table. Oregon, as previously stated, has had a larger experience than any other state in testing the initiative and referendum. Just why this has been true we may not be able to answer fully. The thorough propaganda that preceded the introduction of the system in the state evidently aroused in the people a desire to make use of it when the power was conferred. Mr. U'Ren and his friends were thoroughly in earnest. They did not aid in placing this amendment in the constitution for ornamental purposes. Their organizations were retained and strengthened for the exercise of the new powers reserved to the people.

VOTES ON INITIATIVE AND REFERENDUM MEASURES SUBMITTED IN
OREGON, 1902-1910

The following table gives the votes on measures since the introduction of direct legislation in Oregon and shows what percentage of the total vote for candidates was cast on each measure:

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
ELECTION 1902					
<i>Total Vote 92,920</i>					
Original initiative and referendum amendment.....	62,024	5,668	56,356	.....	73
ELECTION 1904					
<i>Total Vote 99,315</i>					
Local option liquor bill ¹	43,316	40,198	3,118	.....	84
Direct primary bill ¹	56,205	16,354	39,851	.....	73
ELECTION 1906					
<i>Total Vote 96,751</i>					
Woman suffrage amendment ¹	36,928	46,971	.....	10,043	87
Amendment applying initiative and referendum to acts of legislature affecting constitutional conventions and amendments ¹	47,661	18,751	28,910	.....	69
Amendment to give cities and towns exclusive power to enact and amend their charters ¹	52,567	19,942	32,625	.....	75
Amendment authorizing the legislature to fix the compensation of state printer ¹	63,749	9,571	54,178	.....	76
Amendment for initiative and referendum on all local laws ¹	47,778	16,735	31,043	.....	67
Bill proposing change in local option law (proposed by liquor interests) ¹ ...	35,397	45,144	.....	9,747	83
Bill for state-ownership of a toll road ¹ ...	31,525	44,525	.....	13,000	79
Anti-pass bill (railroad) ¹	57,281	16,779	40,502	.....	76
Bill for tax on gross earnings of sleeping, refrigerator, and oil car companies ¹ ...	69,635	6,440	63,195	.....	79
Bill for tax on gross earnings of express, telegraph and telephone companies ¹ ...	70,872	6,360	64,512	.....	80
Omnibus appropriation bill for the maintenance of state institutions ²	43,918	26,758	17,160	.....	73
ELECTION 1908					
<i>Total Vote 116,614</i>					
Amendment increasing compensation of members of the legislative assembly ³ ...	19,691	68,892	.....	49,201	76
Amendment relating to location of state institutions ³	41,975	40,868	1,107	.....	71
Amendment increasing the number of judges of the supreme court and making other changes relative to the judiciary ³	30,243	50,591	.....	20,348	69

VOTES ON INITIATIVE AND REFERENDUM MEASURES—Continued

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
Amendment changing time of holding general elections from June to November ³	65,728	18,500	47,138	.....	72
Bill relative to the custody and employment of county prisoners ²	60,443	30,033	30,410	.....	78
Bill requiring railroads to give public officials free passes ²	28,856	59,406	.....	30,550	76
Bill appropriating \$100,000 for armories ²	33,507	54,848	.....	21,341	76
Bill to increase appropriation for state university ²	44,115	40,535	3,580	.....	72
Woman suffrage amendment ¹	36,858	58,670	.....	21,812	82
Fishery bill proposed by fish-wheel operators ¹	46,582	40,720	5,862	.....	75
Amendment giving power to cities and towns to regulate race tracks, pool rooms, sale of liquor, etc. ¹	39,442	52,346	.....	12,904	79
Amendment exempting property improvements from taxation ¹	32,066	60,871	.....	28,805	80
Amendment providing for the recall, <i>i. e.</i> , the removal of a public officer by vote of the people and the election of his successor ¹	58,381	31,002	27,379	.....	77
Bill instructing legislators to vote for people's choice for United States senators ¹	69,668	21,162	48,506	.....	78
Amendment providing for proportional representation ¹	48,868	34,128	14,740	.....	71
Bill limiting expenditure of money in political campaigns ¹	54,042	31,301	22,741	.....	73
Fishery bill proposed by gill-net operators ¹	56,130	30,280	25,850	.....	74
Amendment requiring indictment to be by grand jury, etc. ¹	52,214	28,487	23,727	.....	69
Bill to create Hood River county ¹	43,948	26,778	17,170	.....	61
ELECTION 1910					
<i>Total Vote 120,248</i>					
Woman suffrage amendment ¹	35,270	59,065	.....	23,795	78
Act authorizing purchase of site, construction and maintenance of branch insane asylum ³	50,135	41,504	8,630	.....	76
Act calling convention to revise state constitution ³	23,143	59,974	.....	36,831	69
Amendment providing separate election districts for members of the general assembly ³	24,000	54,252	.....	30,252	65
Amendment permitting classification of property for purposes of taxation ³	37,619	40,172	.....	2,553	64

VOTES ON INITIATIVE AND REFERENDUM MEASURES—Continued

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
Amendment authorizing establishment of railroad districts and purchase and construction of railroads ³	32,844	46,070	.....	13,226	65
Taxation amendment authorizing uniform rule of taxation "except on property not specifically taxed," etc. ³	31,629	41,692	.....	10,063	61
Act increasing judge's salary in eighth judicial district ³	13,161	71,503	.....	58,342	70
Bill to create Nesmith county ¹	22,866	60,591	.....	37,725	69
Bill to maintain state normal school at Monmouth ¹	50,191	40,041	10,147	.....	75
Bill to create Otis county ¹	17,426	62,016	.....	44,590	66
Bill providing for annexation of portion of Clackamas county to Multnomah county ¹	16,250	69,002	.....	52,752	71
Bill to create Williams county ¹	14,508	64,090	.....	49,582	65
Amendment providing for county regulation of county taxation and abolishing poll tax ¹	44,171	42,127	2,044	.....	72
Amendment providing for city local option ¹	53,321	50,779	2,542	.....	86
Bill to fix liability of employers ¹	56,258	33,943	22,315	.....	75
Bill to create Orchard county ¹	15,664	62,712	.....	47,048	65
Bill to create Clark county ¹	15,613	61,704	.....	46,091	64
Bill providing for permanent support, by taxation, of Eastern Oregon State Normal School ¹	40,898	46,201	.....	5,303	72
Bill providing for annexation of portion of Washington county to Multnomah county ¹	14,047	68,221	.....	54,174	68
Bill providing for permanent support, by taxation, of the Southern Oregon State Normal School ¹	38,473	48,655	.....	10,182	72
Amendment prohibiting manufacture and sale of intoxicating liquors ¹	43,540	61,221	.....	17,681	87
Bill to make prohibition amendment effective ¹	42,651	63,564	.....	20,913	87
Bill creating board of commissioners to examine and report on employers' indemnity for injuries ¹	32,224	51,719	.....	19,495	69
Bill prohibiting the taking of fish from Rogue river except by hook and line ¹	49,712	33,397	16,315	.....	69
Bill to create Deschutes county ¹	17,592	60,486	.....	42,894	65
Bill to provide for creation of new towns, counties and municipal districts by popular vote within territory affected ¹	37,129	42,327	.....	5,198	66
Amendment permitting counties to incur indebtedness beyond \$5,000 to build roads ¹	51,275	32,906	18,369	.....	70

VOTES ON INITIATIVE AND REFERENDUM MEASURES—Continued

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
Bill extending primary law so as to allow voters to express their choice for candidate for President and Vice-President, presidential electors and delegates to presidential conventions ¹ .	43,353	41,624	1,729	.....	71
Bill to create board of inspectors of state government and providing for bi-monthly reports ¹	29,955	52,538	.....	22,583	68
Amendment extending initiative, referendum and recall powers of the people, etc. ¹	37,031	44,366	.....	7,335	67
Amendment providing for verdict of three-fourths of jury in civil cases and separate summons for grand and trial jurors; authorizing certain changes in judicial system and procedure of supreme court; fixing terms of supreme court and official tenure of all courts ¹	44,538	39,399	5,139	.....	69

¹ Submitted under the initiative.² Submitted under the referendum upon legislative act.³ Submitted to the people by the legislature.

A further fact is worthy of consideration in this connection. It is comparatively easy to get the required percentage of signatures to petitions in Oregon. We are apt to think of this as a sparsely settled agricultural state. It is so in part, but it has a comparatively large urban population, and this is centered in one large city. Thirty per cent of the population of the state is in Portland. In the State of Ohio only twenty-nine per cent of the total population is found in the cities of Cleveland, Cincinnati, Columbus, Toledo and Dayton. If, therefore, cities of over 100,000 inhabitants are considered, Oregon has a comparatively greater urban population than Ohio or a number of other more populous states. This makes it easy to get the required percentage of signatures to petitions in the one large city, Portland.

It is natural, perhaps, that the people of Oregon should be divided in opinion, even after their somewhat extended experience with the initiative and referendum. The views of the friends of the

system are fairly set forth in the following statement from an address by United States Senator Jonathan Bourne:

When the initiative and referendum was under consideration it was freely predicted by enemies of popular government that the power would be abused and that capitalists would not invest their money in a state where property would be subject to attacks of popular passion and temporary whims. Experience has exploded this argument. There has been no hasty or ill-advised legislation. The people act calmly and deliberately and with that spirit of fairness which always characterizes a body of men who earn their living and acquire their property by legitimate means. Corporations have not been held up and blackmailed by the people, as they often have been by legislators. "Pinch bills" are unknown. The people of Oregon were never before more prosperous and contented than they are to-day, and never before did the state offer such an inviting field for investment for capital. Not only are two transcontinental railroads building across the state, but several interurban electric lines are under construction, and rights of way for others are in demand.

Quite at variance with this estimate is the view of Hon. Frederick V. Holman, regent of the Oregon State University. In a recent address in Chicago he said among other things:

It is a political axiom that the majority should rule, but without prejudice to the rights of the minority. In Oregon under the initiative the minority rules in many instances and sometimes to the prejudice of the majority. . . . Briefly to summarize, then, we find that the so-called "reserve" power is greatly abused; that measures in overwhelming numbers and many of them loosely drawn are being put upon the ballot; that the percentage of those who do not participate in direct legislation is increasing; that lack of intelligent grasp of many measures is clearly indicated; that legislation is being enacted by minorities to the prejudice of the best interest of the majority; and that the constitution itself is being freely changed with reckless disregard of its purpose and character.

The impartial observer must concede, however, that the people of Oregon are not disposed to surrender the power reserved to them in the initiative and referendum. A comparatively fair index to the popularity of the system is found in the vote at the election of 1910 on the "act calling a convention to revise the state constitution." It was generally understood that the purpose of this act was to revise the initiative and referendum out of the constitution. The vote stood: for the act, 23,143; against the act, 54,525.

Nevada

In 1904 a referendum amendment to the constitution of Nevada, submitted to the electors of that state by the legislature, was approved

by a large majority in a comparatively light vote. Ten per cent of the electors are empowered to invoke the referendum against any law or resolution passed by the legislature. A majority of those voting thereon can approve or veto a measure. Thus far, the people have invoked the referendum on only one measure. In January, 1908, after the labor trouble at Goldfields, a law creating a state constabulary of 250 men was passed. Against this the organized labor of the state invoked the referendum. At the November election the law was upheld by a vote of 9,954 to 9,078. A constitutional amendment providing for the initiative has been submitted to the people and will be voted on at the coming November election.

Montana

The electors of Montana in 1906 ratified an amendment to their constitution providing for direct legislation. Eight per cent of the voters at the last preceding gubernatorial election are required on initiative, and five per cent on referendum petitions. The usual "emergency laws" are excepted from the referendum, while "laws relating to appropriations for money," laws for the submission of constitutional amendments and "local and special laws" may not be invoked by the initiative or submitted to the electors by referendum petition. The percentages of signatures to either the initiative or referendum petitions must come from at least two-fifths of the whole number of counties of the state. The law against which the referendum is invoked continues in force until voted upon, unless the petition against it is signed by fifteen per cent of the electors. In the latter case the operation of the law is suspended as soon as the petition is filed. If a majority of the electors voting on any measure vote against it, the measure is void. As usual in other states that have adopted constitutional provisions for direct legislation, the governor may not veto a measure submitted to the people. The style of all laws originated by the initiative shall be, "Be it enacted by the people of Montana." To this date the electors of the state have not used the "reserved powers" in this section of their constitution.

Oklahoma

When Oklahoma adopted her constitution preparatory to admission into the Union, that document was widely criticised in cer-

tain quarters as "radicalism run wild." Indeed, if well authenticated reports are true, men in high places, inspired with patriotic fervor, sought to prevent the approval of the constitution by the people, lest its irrational and "socialistic" spirit might sweep with consuming fury beyond the borders of the new state to other inflammable territory. The many worded constitution has proven more formidable in length than in the fundamental character of its ponderous articles and numerous sections. The student will be a little surprised to find that the article devoted to the initiative and referendum is explicit, comparatively brief, carefully written and conservative in word and spirit. The percentages prescribed for signatures are fifteen to initiate a constitutional amendment, eight to initiate any "legislative measure," and five to order the referendum on any act (emergency measures excepted) passed by the legislature. The people are required to vote at the next general election on measures submitted to them, unless a special election is ordered by the legislature or the governor. "Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state and addressed to the governor of the state, who shall submit the same to the people." The referendum "may be demanded against one or more items, sections, or parts of any act of the legislature," but this shall not delay the remainder of the act from going into effect. The initiative and referendum is extended to all counties and districts of the state. A measure rejected by the people can not be brought before them again by initiative petition for three years, unless said petition is signed by twenty-five per cent of the legal voters.

The following provision of this article is important:

"Any measure referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast at such election. Any measure referred to the people by referendum shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise."

These requirements, it will be seen, make it comparatively much more difficult to enact a law by initiative process than to veto it through the referendum.

Following are the results of the operation of the initiative and referendum in Oklahoma:

INITIATIVE AND REFERENDUM VOTES IN OKLAHOMA

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
1908					
Initiative bill, authorizing school lands of the state to be sold to homesteaders	96,745	110,840	.....	14,095	82
Legislative proposal to establish a "New Jerusalem," or model city, for seat of state government	117,441	75,792	41,649	.....	76
(Total vote at election, 252,022.)					
1910					
SPECIAL ELECTION, JUNE 11 ⁴					
Initiative amendment, providing for merger of railroad companies	53,784	108,205	.....	54,421	100
Initiative bill, relative to location of state capital	96,515	64,501	32,014	.....	99
(Total vote, 161,989.)					
1910					
SPECIAL ELECTION, AUGUST 2					
Initiative amendment, containing "grandfather clause" for disfranchising negroes	135,443	106,222	29,221	.....	100
(Total vote, 241,655.)					
1910					
REGULAR ELECTION					
Initiative amendment, providing for woman's suffrage	88,808	117,736	.....	28,988	84
Initiative amendment, providing for local option on liquor question	105,041	126,118	.....	21,077	94
Legislative proposal to establish a "New Jerusalem," or model city, for seat of state government	84,336	118,889	.....	34,563	82
Referendum on general election law	80,146	106,459	.....	26,313	76
(Total vote for governor, 245,452.)					

Maine

Maine was the first state on the Atlantic sea-board to provide in its constitution for the initiative and referendum. Laws may be proposed by initiative petitions with signatures of 12,000 electors. Constitutional amendments can not be initiated by petition. If a law proposed by initiative is not enacted by the legislature it must

⁴Supreme court declared this election unconstitutional.

be referred to the people, either alone or with a competing measure of similar character framed by the legislature. Laws, except emergency measures, shall not take effect until ninety days after the adjournment of the legislature. If before the expiration of this time petitions signed by 10,000 electors are filed with the proper officers against any law it must be submitted to popular vote for adoption or rejection. The legislature is also authorized to enact measures, subject to ratification by referendum vote of the people. A majority of those voting for and against any measure adopts or rejects it. The initiative and referendum powers are extended to the municipalities of the state.

In 1909 the people of Maine for the first time voted for measures under this new provision of their constitution with the following results:

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
Referendum on act fixing standard of alcohol in intoxicating liquors.....	31,093	40,475	.....	9,382	50
Referendum on act to divide the town of York and establish the town of Gorges.....	19,692	34,722	.....	15,030	39
Referendum on act authorizing reconstruction of Portland Harbor bridge.. (Total vote for governor, 141,031.)	21,251	29,851	.....	8,700	36

Missouri

In 1903 the legislature of Missouri voted to submit to the people an amendment to their constitution providing for direct legislation. The required percentages of signatures to petitions were too high to suit the friends of the movement and they had other objections to the amendment. It was defeated at the election in 1904. In 1907 the legislature again submitted an initiative and referendum amendment which was approved by a substantial majority of the electors in November of the following year. This amendment provides for the referendum on petitions signed by five per cent, and for the initiative on petitions signed by eight per cent of the electors

of the state. The latter applies to constitutional amendments as well as laws enacted by the legislature. The required percentage of signatures must come from at least two-thirds of the congressional districts of the state.

Supplemental legislation was promptly enacted for carrying this constitutional provision into effect. Two amendments to the constitution were submitted on initiative petitions in 1910 with the following results:

	Yes	No	Majority Approving	Majority Rejecting	Percentage of Total Vote
State-wide prohibition of the liquor traffic.....	207,281	425,406	.....	218,125	94
State tax for support of University of Missouri.....	181,659	344,274	.....	162,615	79
(Total vote, 671,763.)					

Through the republican organization of the state, petitions were circulated to initiate a constitutional amendment providing for a change in the senatorial districts of the state. The secretary of state refused to accept these petitions on the ground that it was unconstitutional to amend the constitution in this regard. In this action he was sustained by the supreme court of the state.

In a recent letter Herbert S. Hadley, governor of Missouri, writes:

It is probable that quite a number of amendments to the constitution and legislative measures of public importance will be submitted to a vote of the people at the coming election by initiative petition. Among these will probably be a measure dividing the state into congressional districts; one providing for home rule for the people of the large cities in police and excise affairs; an amendment to the constitution authorizing a workmen's compensation law; one authorizing a public service corporation commission, and one prohibiting contract labor in the state penitentiary.

I believe if the question of retaining or rejecting this proposition (the initiative and referendum) were submitted to a vote of the people, that they would vote to retain this provision of the constitution by a much larger majority than that by which it was adopted in 1908.

Michigan

The constitution of Michigan, adopted in 1908, gives the legislature power to refer any act, except appropriation bills, to the people. Acts so referred do not become laws unless approved by a majority of the electors voting thereon. The people are also given the power to initiate constitutional amendments, the signatures of twenty-five per cent of those voting for secretary of state at the last preceding election being required to submit such amendment to the legislature, which may, in joint session of both houses, reject it or refer it to the people in original or modified form.

Arkansas

The initiative and referendum constitutional amendment, adopted by the people of Arkansas in 1910, in all of its essential features, including percentages of voters required to sign petitions, follows the corresponding provision in the constitution of Oregon.

Colorado

The State of Colorado followed closely in the footsteps of Arkansas in adopting the Oregon plan of direct legislation. The legislature of the state met in special session September 10, 1910, and submitted to the people an amendment which they adopted at the following November election.

Arizona

The constitutional convention of Arizona in 1910, true to western predilection, framed a constitution so emphatically progressive that it precipitated extended discussion in both houses of congress when the question of admitting that state into the Union was under consideration. The presidential veto eliminated from that constitution the recall provision, but left intact the reservation of initiative and referendum powers. Ten per cent of the voters may propose laws and fifteen per cent constitutional amendments. Five per cent may order the submission of any measure (except emergency laws) passed by the legislature. Initiative powers are extended to "cities, towns and counties."

New Mexico

New Mexico, seeking admission into the Union with Arizona, adopted a constitution in 1910 that was considered only "conserva-

tively progressive." It provided for the referendum but not for the initiative. The laws excepted from this provision are those "providing for the preservation of the public peace, health and safety; for the paying of the public debt and interest thereon, or the creation or funding of the same, except as in this constitution otherwise provided; for the maintenance of public schools or state institutions, and local or special laws." Referendum petitions must be signed by ten per cent of the voters of the state, and this ratio must be contributed by at least three-fourths of all the counties. A law against which referendum petitions are filed continues operative until it is vetoed at the election, unless fifteen per cent of the electors have signed the petitions, in which case the operation of the law is suspended until the people vote upon it. A law submitted to the people is rendered void if a majority of those voting on it vote against it, but the total vote cast thereon must be at least forty per cent of the entire vote cast at the election.

California

The latest state to incorporate an initiative and referendum amendment in its constitution is California, and this amendment exceeds in length any of similar import and purpose previously ratified in the United States. In the first section the people "reserve to themselves the power to propose laws and amendments to the constitution, and to adopt the same at the polls, independent of the legislature, and also reserve the power, at their own option to so adopt or reject any act, or section or part of any act passed by the legislature."

This amendment provides:

(1) For the direct initiative⁵ on laws and constitutional amendments through petitions signed by eight per cent of the electors voting at the last previous gubernatorial election.

⁵ In a general way the initiative, two of its phases, and the referendum may be defined as follows:

1. The initiative is the power reserved to the people to originate laws or constitutional amendments by petition and enact them by popular vote.

2. The direct initiative is the power reserved to the people to originate laws or constitutional amendments by petition and enact them by popular vote, without reference to the general assembly.

3. The indirect initiative is the power reserved to the people to originate laws or constitutional amendments and enact them by popular vote after they have been referred for consideration to the general assembly.

4. The referendum is the power reserved by the people to veto or sustain by popular vote a law passed by the general assembly.

(2) For the indirect initiative on proposed laws through petitions signed by five per cent of the electors voting at the last preceding gubernatorial election.

(3) For the referendum on laws through petitions signed by five per cent of the electors voting at the last preceding gubernatorial election.

(4) The reservation of initiative and referendum powers to the counties, cities and towns of the state.

When a proposed law is submitted through the indirect initiative to the legislature, that body may enact it without change. If this is not done the proposed law must be submitted to the electors, but the legislature may submit at the same election a competing measure of similar character. Direct initiative measures must be submitted at least ninety days before the election at which they are voted upon. The usual emergency measures are excepted from the operation of the referendum. Many details are given in regard to signatures to petitions, submission to the electors of the state, and the conduct of elections.

Proposed Amendments

In the summary on a preceding page it will be noted that initiative and referendum constitutional provisions are to be submitted this year in an unusually large number of states. No attempt will be made to analyze these provisions. They are all modeled after those already adopted and contain few distinctive features. The proposed amendment to the constitution of Washington contains the following regulations for voting on competing measures:

"The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the vote on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then

the measure receiving a majority of the votes on the second issue shall be law."

Much has been said of the amendment proposed to the constitution of Wisconsin. Approving reference was made to it by Theodore Roosevelt in his speech before the constitutional convention of Ohio. It provides for the initiative on any bill previously introduced in the legislature, either in its original form or as amended at any stage of its progress before that body. The initiative petition must be signed by at least eight per cent of the "qualified electors calculated upon the whole number of votes cast for governor at the last preceding election,"

The proposed amendment to the constitution of Ohio, adopted in convention and to be submitted to the people September 3d of this year, provides for a unique indirect initiative. The proponents of this section have summarized its provisions as follows:

"If at any time not less than ten days prior to the commencement of any session of the general assembly three per centum of the electors shall sign a petition proposing a bill and shall file the same with the secretary of state, it shall be transmitted by him to the general assembly. If the general assembly passes the bill as petitioned for, it shall become a law subject always to the referendum as herein-after defined. If the general assembly fails to pass the law petitioned for, or passes it in an amended form, a petition containing the signatures of three per centum of the electors in addition to the original three per centum may require the submission to the voters for approval or rejection of the law originally petitioned for, or as modified by any of the amendments proposed by the general assembly. If a majority of those voting on the proposed measure vote in favor of it then it shall become a law and the law passed by the legislature, if any, pursuant to the petition presented to the general assembly shall become void."

To this explanation might be added the fact that the legislature is given ample opportunity to amend, as it desires, the proposed law and pass it in modified form. If this is satisfactory to the friends of the measure, they may simply permit it to go into effect without further action. In such a case the necessity of submitting competing measures is avoided. Every law proposed by initiative petition will receive all the benefit of legislative scrutiny and modifications. For this consideration the legislature is given the ample time of four months.

Local Initiative and Referendum by General State Laws

Oberholtzer in his "The Referendum, Initiative and Recall in America," gives the following summary for those states that have adopted the initiative and the referendum in local matters by general laws:

	Initiative, Per cent	Referendum, Per cent
South Dakota	5	5
Nebraska	20	20
Oregon	15	10
Montana	8	5
Oklahoma:		
In counties and districts	16	10
In cities	25	25
Maine	Facultative Facultative	
Arkansas		
Colorado	15	10
Wisconsin:		
General election	15	20
Special election	25	20
Ohio	30	15
California (counties):		
General election	10	20
Special election	20	20
California (cities):		
Regular election	15	25
Special election	30	25

While this contribution calls for neither a horoscope nor a prophecy, a few observations based on recent experience and present tendencies may not be wholly out of place:

(1) The initiative and referendum in some form will probably in time be introduced into almost every state constitution in the United States.

(2) With a large and rapidly increasing population this country will never substitute direct legislation for the representative system. Legislatures will continue to enact practically all state statutes. In case of flagrant failure or betrayal of the people in the enactment of laws subversive of their welfare, the people will have a remedy. The powers reserved in the initiative and referendum, it may be truly said, are designed to make representative government more thor-

oughly representative. Such has been the purpose of the great majority of those supporting the movement, and it is safe to say that such has been the effect of the inauguration of direct legislation in the states where it has been introduced, and to an appreciable extent in the states where it has not yet received constitutional sanction. The awakening of the people on the subject has made representatives more responsive to popular demands. With the legislature quick to respond to the will of the people there will soon be rare occasions in any state for the use of the initiative and referendum.

(3) It is probable that the reservation of these powers will have a permanently wholesome influence on the agents of "special privilege," variously denominated in reformatory nomenclature as "bosses," "lobbyists," "minions of predatory wealth," etc. They will not go to the expense of securing by their peculiar methods legislation that may be vetoed by the people. These "bosses" and "minions" will not, however, be removed from the arena of political activities. They will next go to the sources of power, the people themselves, and make the effort to manipulate them as they have already done, in some instances, through the direct primaries.

(4) "In the long run the people may be trusted to do the right thing in matters pertaining to their own government," we are told. While this is true, a proposed law is not necessarily perfect in form or beneficent in operation simply because it was drawn by one of "the plain, honest, common people." Those who formulate a law to be placed at the head of initiative and referendum petitions ought to welcome, as they doubtless will, all the aids sought by the conscientious member of the general assembly. This expert service should be offered by the state and should be entirely independent of partisan influences.

(5) The initiative and referendum places larger powers in the hands of the people. The success of this supplemental function of government implies, encourages, and demands an intelligent, independent, incorruptible and patriotic electorate.

(6) While the verdict on the initiative and referendum seems destined to continue favorable, the ultimate conclusion may take the direction of the testimony of a governor of a state in the middle West, where the system has been given its initial test. "On the whole," he said, "I think it is a good thing, but I do not believe that it will prove the panacea that its friends predict or the source of danger to the 'special interests' that they now anticipate."